

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

RESOLUTION G-3552

April 25, 2019

R E S O L U T I O N

Resolution G-3552. Annual fee for registered Core Transport Agents is adopted pursuant to Public Utilities Code Section 984(b) and Decision 18-02-002.

PROPOSED OUTCOME:

- Adopts an annual fee of \$2,860 to be assessed on each registered Core Transport Agent starting July 1, 2019.

SAFETY CONSIDERATIONS:

- There is no impact on safety.

ESTIMATED COST:

- Each registered Core Transport Agent will pay an annual fee of \$2,860. Pursuant to Public Utilities Code Section 984(b), if payment is not received within 30 days of billing, a 15-percent penalty will be assessed on the full amount billed.

By Decision 18-02-002, Ordering Paragraph 5(a)(v)(1), Issued on February 15, 2018.

SUMMARY

This Resolution adopts an annual fee of \$2,860 for the year beginning July 1, 2019, on all registered Core Transport Agents. A 15-percent penalty will be added if payment is not received within 30 days of billing.

BACKGROUND

Overview of Consumer Protection Rules for Non-Utility Service Providers

Senate Bill (SB) 656 (Wright, 2013) introduced Public Utilities (PU) Code §§ 980-989.5, establishing a framework for consumer protection rules for non-utility,

third-party natural gas procuring entities known as Core Transport Agents (CTAs). On March 13, 2014, the Commission opened Rulemaking (R.) 14-03-002 to implement SB 656. In Decision (D.) 18-02-002, the Commission's Phase Two Decision addressing CTA registration and consumer protection issues, the Commission directed Energy Division (ED) staff to submit a review, report and proposed resolution by March 1, 2019, to recommend an annual fee to recover the cost of administering the CTA registration program.¹ CTAs who register with the Commission currently pay a one-time registration fee of \$100. While D.18-02-002 declined to specify whether a change was needed to the CTA registration fee, it did find that PU Code § 984(b) allows for a second annual fee to cover the costs of administering the registration as well as other facets of consumer protection directly related to core transport service.² Further, the Decision found that a second fee is consistent with the recurring annual fee currently applied to non-utility, third-party electricity procuring entities known as Electric Service Providers (ESPs), which was adopted in D.98-03-072 and implemented through Resolution M-4797.

Resolution M-4797

Adopted on November 4, 1999, Resolution M-4797 imposes an annual fee of \$1,000 on all registered ESPs. Initially, the annual fee was calculated by dividing the estimated administrative costs (roughly \$1 million) by the number of active, inactive and suspended ESPs (256), resulting in a nearly \$4,000 annual fee.

However, the Resolution states:

...this [residential and small commercial Direct Access (DA)] market is still new, and market penetration is limited, it would be prudent to establish an annual fee of \$1,000, which is below the full cost of recovery and should not discourage new entrants in the market.³

1. D.18-02-003 at Ordering Paragraph 1(e) and 5(a)(v)(1)

2. Ibid, p. 78

3. Resolution M-4797, p. 3

The Commission did not further discuss the nominal \$1,000 annual fee.

DISCUSSION

As noted above, D.18-02-002 requires an annual review of the costs of administering the CTA registration program. The Decision states:

The staff responsible for the annual review need to be cognizant of the costs of activities, especially §§ 984.5 and 987, that could drive these annual costs even higher. At the same time, staff and the Commission need to weigh whether the proposed increase in the annual fee will deter market entry by prospective CTAs.⁴

As stated in Resolution M-4797, the Commission must balance the costs of administering the registration program with the impact an annual fee could have deterring potential market participants. Because the language of the consumer protection rules for ESPs is similarly applied to CTAs, and the Commission has drawn on previous experience in implementing those rules from ESPs to CTAs, we follow that precedent in this Resolution.

This Resolution will address the tasks for administering the CTA registration program; breakdown the costs, including drivers that might increase the fee; and explain how these factors are used to set the CTA annual fee.

The Tasks to Administer the CTA Registration Program

PU Code § 984(b) requires the “commission [to] annually determine the costs of administering the registration program and other facets of consumer protection directly related to the core transport service transactions of core transport agents.” D.18-02-002 determined the tasks to implement the relevant PU Codes Sections (984.5 and 987), which are summarized below:

- Informational Guides and Tools: PU Code § 984.5(c) requires the Commission to “compile and post on its Internet Web site understandable

⁴ D.18-02-002, p. 79

D. 18-02-002, Ordering Paragraph 5(a)(v)(1)/MA8

informational guides or other tools to help core gas customers understand core transport service options” in multiple languages. § 984.5(a) also requires the Commission to compile and maintain a list of all registered CTAs, including the number of complaints against those CTAs (in relation to their total customers), and the disposition of those complaints. This involves collaboration with ED, the Information Technology Services Division (ITSD), Administrative Law Judge (ALJ) and the Consumer Affairs Branch (CAB) to provide formal and informal complaint data and post the relevant information, plus the informational guides.

- Public Alerts: Pursuant to PU Code § 984.5(b), D.18-02-002 directs that before a public alert can be issued, ED, and the Utility Enforcement Branch (UEB) should collaborate to document and provide evidence against CTAs providing misleading information.
- Public Advocates Office (PAO) Complaint Analysis: PU Code § 984.5(d) requires the PAO to analyze customer complaints and their disposition. From this analysis, they are to determine if changes are necessary, and make recommendations to the Commission for changes to consumer protection rules.
- Do Not Call List: PU Code § 987 requires the Commission to develop and maintain “a list of core gas customers who do not wish to be solicited by telephone, by a gas corporation, marketer, broker, or aggregator for gas service, to subscribe to or change their core transport agent.”

D.18-02-002 requires ED to coordinate and lead many of these tasks. Therefore, we first focus on the ED resources used to administer the CTA Registration Program.

The Base Cost of Administering the CTA Registration Program

As part of the Fiscal Year 2018-2019 Budget, the Commission received a permanent position, at a cost of \$103,000, to annually “implement newly defined and magnified registration and consumer protection duties” regarding CTAs.⁵ The list of tasks was taken directly from D. 18-02-002, and included the estimated time spent on both on-going and one-time tasks for this new position. As the

⁵. Budget Request Name 8660-305-BCP-2018-A1, p. 1
https://esd.dof.ca.gov/Documents/bcp/1819/FY1819_ORG8660_BCP2248.pdf

largest portion of the administrative costs of the CTA registration program is borne by ED, we use this amount as the base cost.

The Variable Costs of Administering the CTA Registration Program

In addition to the base cost for ED, additional tasks and duties, and subsequent costs of other Divisions, will vary largely on the number of consumer contacts the Commission receives regarding CTAs.

Since consumers are now directed to contact CAB for CTA-related issues, this may increase the workload of CAB. As stated in D. 18-02-002 “CAB should be involved at the outset for any informal complaints.”⁶ This includes logging all customer contacts to CAB, including inquiries that don’t reach the level of an informal complaint. The Decision also states:

CAB is directed to review the information data categories that it collects when informal complaints are submitted, and to make revisions to the type of data collected if it believes that would improve the Commission’s monitoring of consumer protection issues involving CTAs.⁷

The Decision goes on to require CAB to review and make updates to the online informal complaint forms. It also requires both ALJ and PAO Divisions to do the same for the formal complaint process. These webpage updates also require the assistance of ITSD.

Furthermore, we must also consider how complaints, not just consumer contacts, can affect the cost of the CTA registration program. Pursuant to PU Code § 984.5(a), the Commission must post on its website the number of informal and formal complaints as a percentage of customers served by each CTA, as well as the disposition of those complaints. As the number of complaints increase, so will the costs of this task. Furthermore, the on-going complaint analysis by PAO,

⁶ D-18-02-002, p. 58.

⁷ Ibid

pursuant to PU Code § 984.5(d), will vary based on the volume of CTA-related complaints CAB receives.

The ultimate intent of the CTA Registration program is consumer protection, suggesting potential future consideration of a complaint-based cost in determining the annual fee. Generally, customer complaints increase with the number of customers served. A complaint-based fee would signal to prospective CTAs that they provide accurate information to their potential customers in order to minimize complaints, and their annual fee, while expanding their customer base. The percentage of complaints to customers served by each CTA, that the Commission is required to post, could be one method of deriving this complaint-based fee.⁸ As this information is already required, it would not require additional administrative costs, or create a higher fee. This would potentially provide additional consumer protections consistent with the statutory directive for any annual fee to cover “other facets of consumer protection directly related to the core transport service transactions of core transport agents.”⁹

That said, currently, it is difficult to evaluate a complaint-based cost. The CTA-related complaint process at the Commission was implemented only within the last year. While the Commission is seeing an increase in CTA-related consumer contacts, the volume is much lower than data the Commission received from the utilities. The transition of CTA-related complaint processing from the utilities to the Commission may be contributing to this decrease in contact volume, or the increased oversight of the Commission may be encouraging certain CTAs to improve their customer enrollment procedures (i.e. providing clearer information to potential customers); it is difficult to tell. Therefore, we currently lack sufficient data to adequately estimate a complaint-based cost in evaluating the CTA annual fee.

We may consider a complaint-based variable cost in future assessments of the costs of administering the CTA registration program. As illustrated above, the costs of administering the program will vary year-to-year, based on the number of complaints the Commission receives regarding CTAs. Pursuant to PU Code §

⁸. Pursuant to PU Code § 984.5(a)

⁹. PU Code § 984(b)

984(b) and D.18-02-002 Ordering Paragraph (OP) 5(v)(a), we ask Commission staff to continue to review the factors that affect the annual costs and, should a change be necessary, prepare a resolution for the Commission.

Annual Fee for CTAs

D.18-02-002 determined an interim annual fee of \$100 be assessed on all registered CTAs. The Commission also requested staff to do annual reviews of the costs of administering the CTA registration program and prepare a proposed resolution if these costs warrant an increase. If we use the methodology as suggested by M-4797, there are 36 CTAs registered with the Commission, so evenly distributing the \$103,000 of ED's known administrative cost across the 36 CTAs leads to an annual fee of \$2,860 [i.e. $\$103,000/36=\$2,861.11$]. The interim \$100 annual fee for all registered CTAs is insufficient to cover the \$103,000 known costs for ED [$\$100 \times 36 = \$3,600$].

Party comments in R. 14-03-002 suggest the \$1,000 ESP annual fee should also be applied to CTAs. However, in Resolution M-4797 the Commission determined that it would be prudent to establish the nominal \$1,000 annual fee as the DA market was "still new."¹⁰ Today, the core aggregation market, in which CTAs participate, is more developed than the DA market was in 1999. In fact, it has been evolving since D.95-07-048 approved "unbundling" utility transportation and natural gas procurement costs for the purposes of aggregating core customer load. Commission Decisions from 1999-2001 promoted further expansion of CTAs to provide service to more residential and small commercial customers.¹¹ In addition, D.14-08-043, the Phase One Decision of R.14-03-002, required all then-operating CTAs to register with the Commission by the second quarter of 2015; this includes nearly two-thirds of all currently registered CTAs. As the core aggregation market in California has been functioning for close to 20 years, the same caution applied in Resolution M-4797 need not apply in determining the annual fee for CTAs. Therefore, we recommend an annual fee of \$2,860 to cover the current base costs of administering the CTA program, with a 15-percent penalty added if payment is not received within 30 days of billing. This annual

¹⁰. Resolution M-4797, p.3

¹¹. D.99-07-015, D.00-05-049, D.01-12-018

fee minimizes the cross-subsidy from non-CTA customers that has funded the CTA registration program since 2014.

We ask Commission staff to monitor potential CTA cancellations or a decline in registrations for signs that the fee is deterring market entry. Staff may propose a revised fee by resolution should a change to this annual fee be necessary in the future.

COMMENTS

Public Utilities Code section 311(g)(1) provides that this resolution must be served on all parties and subject to at least 30 days public review and 20-day comment prior to a vote of the Commission. Section 311(g)(3) provides that this 30-day public review and 20-day comment period may be reduced/waived by Commission adopted rule.

The 30-day public review and 20-day comment period has been reduced by a decision where the Commission has determined that public necessity, as defined in Rule 14.6 (c)(2) requires reduction/waiver of the 30-day public review and 20-day comment period.

Mansfield Power & Gas (Mansfield) filed comments on the Draft Resolution on March 21, 2019.

Mansfield claims the proposed annual fee is regressive, imposing a burdensome cost on smaller participants, and a barrier to entry. They also recommend an annual fee for each CTA based on the previous year's gross-revenue, as assessed in some other states. While we appreciate Mansfield's comments, the \$2,860 annual fee is minimal, and we do not see it as a barrier to entry for all of the reasons previously discussed. California's PU Code § 984(b) requires the Commission to "annually determine the costs of administering the registration program and other facets of consumer protection directly related to the core transport service transactions of core transport agents." As stated, this fee may be underestimating the current cost of administering the program due to lack of clear data on the associated complaint-handling costs. Furthermore, the other state utility commissions Mansfield cites have different statutory requirements than this Commission. Imposing a fee based on the gross revenue becomes a tax, and has the potential to either under- or over-collect the Commission's costs of administering the CTA registration program, which would be contrary to PU

Code § 984(b). The goal of this registration program is to strengthen consumer protection rules, and this annual fee of \$2,860 will only collect what is necessary to fund the Commission's on-going efforts in achieving this goal.

NOTICE

The notice for the Resolution was given by serving the draft to all CTAs, the Service list of Rulemaking (R.) 14-03-002 and by publication on the Commission's Daily Calendar.

FINDINGS

1. Public Utilities Code Section 984(b) authorizes collection of annual fees from Core Transport Agents.
2. Ordering Paragraph 5(a)(v)(1) of Decision 18-02-002 directs Energy Division to review, report, and propose a Resolution to the Commission by March 1, 2019 to determine the annual cost of administering the Core Transport Agents registration program.
3. Resolution M-4797 adopted the annual fee of \$1,000 to be imposed on all Electric Service Providers, balancing the costs of administering the Electric Service Provider registration program against potential deterrence of prospective Electric Service Providers.
4. The Commission imposed similar guidelines on Energy Division when estimating the annual fee for Core Transport Agents regarding the costs of the Core Transport Agent registration program.
5. Energy Division is to act as lead on most of the tasks to implement the consumer protection rules regarding Core Transport Agents.
6. The Commission's Fiscal year 2018-2019 budget includes \$103,000 for Energy Division permanent staff to administer the Core Transport Agent registration program.
7. There is currently not enough data to justify a complaint-based cost to be included in estimating the Core Transport Agent annual fee.

8. A \$2,860 annual fee for Core Transport Agents covers the base costs of administering the Core Transport Agent registration program.

THEREFORE IT IS ORDERED THAT:

1. Pursuant to Ordering Paragraph 1(e) of Decision 18-02-002, an annual fee of \$2,860 is adopted for the year beginning July 1, 2019 for registered Core Transport Agents (CTAs) of record on that date. This fee shall continue to be charged to the registered CTAs on an annual basis on July 1 of subsequent years until modified by further Commission Decision or Resolution.
2. All registered CTAs shall be assessed this annual fee by email and U.S. mail by July 1, 2019 and by July 1 of subsequent years.
3. Pursuant to Public Utilities Code 984(b), if payment is not received within 30 days of billing, a 15-percent late-payment penalty will be assessed on the CTA.
4. Failure to pay the annual fee with 15-percent penalty will subject the CTA to suspension or revocation of its registration.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on April 25, 2019 the following Commissioners voting favorably thereon:

/s/ALICE STEBBINS
ALICE STEBBINS
Executive Director

MICHAEL PICKER
President
LIANE M. RANDOLPH
MARTHA GUZMAN ACEVES
CLIFFORD RECHTSCHAFFEN
GENEVIEVE SHIROMA
Commissioners